In the High Court of Judicature at Madras

Dated: 17.07.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice V. DHANAPALAN

Habeas Corpus Petition No.381 of 2006

Hema .. Petitioner

vs.

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St. George
   Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus as stated therein.

For petitioner : Mr. V. Parthiban
for Mr. M. Rajavelu

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner by name Hema, challenges the impugned order of detention dated 15.03.2006, detaining her husband Thanu @ Thanumalai @ Ajay @ Ajaykumar @ Rajkumar @ Aruppu Kumar as "Immoral Traffic Offender" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1981 (Tamil Nadu Act 14 of 1982).

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2. The brief facts as stated in the grounds of detention are as follows:

(a) The Anti Vice Squad Unit of Chennai City, on instructions from the higher officials, visited various places of Vijayanagaram and Velacherry in order to check whether any prostitution is going on in Vijayanagaram area. While Narasimha Moorthy, Head Constable 8740 was so proceeding near Vijayanagaram bus stand at 16.30 Hrs., Thanu @ Thanumalai @ Ajay @ Ajay Kumar @ Raj Kumar @ Aruppu Kumar (hereinafter called as the detenu) was standing near the bus stand and by clapping his hands, he called Narasimha Moorthy, Head Constable 8740 to come near. When the Head Constable went near the detenu, he asked Narasimha Moorthy whether he needed young girls for copulation. He also showed several girls, who were sitting in a Car. The Head Constable returned back to Anti Vice Squad Police Station and lodged a special report about the conduct of the detenu. The Inspector of Police, Anti Vice Squad registered a case in Cr.No.29/2006 under Sections 3(1), 4(1), 5(1) and 7(1) of Immoral Traffic (Prevention) Act. Thereafter, the police party contacted the detenu over phone and when he came to the spot, viz., to Vijayanagaram bus stand, the police party surrounded and apprehended him on the spot. The Inspector of Police, Anti Vice Squad arrested the detenu and examined him. His confession statement was recorded. The police party also recovered a motor cycle bearing registration No.TN-09-AK-8807, Camera Cell Phone, gold chain and cash of Rs.6,000/- under the cover of a mahazar. Thereafter, the police party proceeded to No.1, Amman Koil Street, Ayya Nagar, Chembakkam, Chennai, where the detenu is running a brothel house and found Bharathy Kannan, Tamil Selvam, Hema and Rani @ Reena and arrested all the four. Their confession statements were recorded. One young girl, by name, Abi was also found in the said house and the police party rescued her and examined her.

(b) Later the Inspector of Police returned to Anti Vice Squad Police Station, examined the witnesses and recorded their statements. All the persons apprehended were produced before the learned 17th Metropolitan Magistrate, Saidapet, Chennai and the learned Magistrate, remanded Ajay @ Thanu, Bharathi Kannan, Tamil Selvam, Hema and Rani @ Reena to judicial custody till 22.03.2006. Ajay @ Thanu, Bharathi Kannan and Tamil Selvan were lodged at Central Prison, Chennai as remand prisoners till 22.03.2006. The ladies Hema, Rani @ Reena and the rescued girl Abi were sent to Government Home, Mylapore, Chennai. The investigation also disclosed that Thanu @ Thanumalai @ Ajay @ Ajay Kumar @ Raj Kumar @ Aruppu Kumar by giving false hope of getting good employment, brought the young girl Abi from Karnataka State and induced and forced her to indulge in prostitution. He also took out a house at No.1, Amman Koil Street, Ayya Nagar, Chembakkam, Chennai for rent, where he kept young girls procured from different places and took the girls to different places in Chennai City in vehicles and compelled them for prostitution and earned huge money with the help of his associates and led life with the said earnings. He is involved in one other case. The act of the detenu in taking girls from neighbouring States who were searching for good employment and forcing

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them for prostitution would adversely affect the maintenance of public health and spread sexual diseases. Further, by calling the young youth to do prostitution would cause greater danger to the society and thereby he has acted in a manner prejudicial to the maintenance of public health and order. After satisfying with all the materials, the detaining authority has concluded that the detenu is a Immoral Traffic Offender and there is compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public Order under Tamil Nadu Act 14 of 1982.

3. Heard Mr. V. Parthiban, learned counsel for the petitioner and Mr. M. Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents.

4. At the foremost Mr. V. Parthiban, learned counsel for the petitioner submitted that the representation of the detenu is dated 22.03.2006 and when the detention was approved on 26.03.2006, the Government failed to consider the said representation, which vitiates the detention order. With reference to the said contention, the Commissioner of Police, Greater Chennai in her counter affidavit, particularly in para-10, has stated that the representation of the detenu dated 22.03.2006 addressed to the detaining authority was received on 24.03.2006 and the same was duly considered by the detaining authority and rejected on 26.03.2006. It is also stated that the rejection order was communicated to the detenu on 27.03.2006 itself. In view of the above factual information, the first contention is liable to be rejected.

5. The learned counsel for the petitioner next submitted that as per the arrest report, the detenu was arrested at 19.00 hours on 06.03.2006, whereas he was remanded to judicial custody at about 7.35 p.m. on 08.03.2006. This vital aspect has not been noticed by the detaining authority and there is no explanation for the same. He also pointed out that the special report which is dated 14.03.2006 available at page 81 of the paper book runs counter to the report of the sponsoring authority and hence, the detention order is liable to be quashed. In the light of the said contention, we verified all the relevant records. It is true that in the arrest memo the date and time is mentioned as 06.03.2006 at 19.00 hours. However, it is seen that the date mentioned in the the remand order relates not only to the detenu, but also to other four accused. The said order which is available at page 79 of the paper book, shows that the learned 17th Metropolitan Magistrate (in-charge) after verifying the grounds of arrest explained and as there was no complaint against the police, remanded all the accused to judicial custody till 22.3.2006. This has been correctly stated in the special report dated 14.03.2006. The learned counsel for the petitioner further pointed out that in the absence of any specific order by the learned Magistrate, it is not clear how the sponsoring authority has stated that male accused were kept in the Police lock up and female accused as well as the rescued girl were kept in the Home at Mylapore, Chennai. According to him, the detaining

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authority ought to have sought for clarification for the same from the sponsoring authority. But, a reading of the special report shows that in paragraph 3 the sponsoring authority has correctly stated that on the orders of the 17th Metropolitan Magistrate dated 08.03.2006, all the male and female accused were sent to Central Prison. It further shows that the remand was extended even in the case of female accused. It also shows that the rescued girl was sent to Home at Mylapore, Chennai. If the entire special report is read as a whole, we are of the view that there is no infirmity as claimed by the learned counsel for the petitioner. The relevant fact to be noted is that by order dated 08.03.2006 all the accused were remanded to judicial custody till 22.03.2006. In other words, the detaining authority has to satisfy himself whether on the date of passing the detention order, the detenu was in remand by an order of Court or not. Neither ourselves, nor the detaining authority are concerned with other accused.

6. The learned counsel for the petitioner next contended that though complaint was made by one Giridharan on 02.03.2006, the case was registered only on 06.03.2006 and this aspect was not considered by the detaining authority. We are unable to accept the said contention. It is true that the complaint of the said Giridharan is dated 02.03.2006. It is further seen that after getting the said information, the Anti Vice Squad after thorough search, identified the detenu and thereafter, registered the case on 06.03.2006 and arrested him. Here again, we do not find any flaw and accordingly, we reject the said contention also.

7. The learned counsel for the petitioner next submitted that though the special report was submitted by the sponsoring authority – Inspector of Police, Anti Vice Squad only on 14.03.2006, the detaining authority, Commissioner of Police, Greater Chennai has passed the order even on 15.03.2006, detaining the detenu as an immoral traffic offender and it would be highly impossible to go through all the reports and arrive at a subjective satisfaction in one day. First of all, this objection was not raised in the affidavit. Even otherwise, it is not a complicated case. The detenu is also involved in one similar case registered in the month of April, 2005 and it is not a complicated issue which require much time for the detaining authority to arrive at a conclusion. The grounds of detention amply show that on going through all the materials and considering the activities of the detenu, the detaining authority satisfied herself and passed the detention order on 15.03.2006. The grounds also disclose that apart from the compliant of Giridharan, the public also wrote letters to the Inspector of Police, Anti Vice Squad to take action against such offenders like, the detenu, who are spoiling the life of young boys and girls, which would spread sexual diseases in an epidemic proposition. Considering all these aspects, in order to prevent the detenu from indulging in such activities in future, the detaining authority passed the detention order on 15.03.2006 which cannot be faulted with, in the light of the abundant materials available before her.

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8. Finally, the learned counsel for the petitioner submitted that there was delay in disposal of the representation. The particulars furnished by the learned Additional Public Prosecutor show that representation was received by the Government on 09.05.2006, remarks were called for on 10.05.2006; remarks were received on 16.05.2006; file was submitted on 17.05.2006; the Under Secretary and the Deputy Secretary dealt with the same on 22.05.2006; the Minister for Prohibition and Excise passed order on 23.05.2006; rejection letter was prepared on 24.05.2006 and the same was sent to the detenu on the same day i.e., on 24.05.2006 and served on the detenu on 26.05.2006. If we exclude the intervening holidays, viz., Saturdays and Sundays, we are satisfied that there is no undue delay as claimed by the learned counsel for the petitioner. On the other hand, we are satisfied that the representation was considered and disposed of within the reasonable time. Accordingly, we reject the said contention also.

In the light of what is stated above, we do not find any error or infirmity in the impugned detention order; consequently, this petition fails and the same is dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. The Secretary to Government
   Prohibition and Excise Department
   Government of Tamil Nadu
   Fort St. George
   Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai 600 008.

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3. The Superintendent
   Central Prison, Chennai.
[In duplicate for communication to the accused].

4. The Public Prosecutor
   High Court, Madras.

+ 1 CC To Mr. M.Rajavelu, Advocate SR NO.31273

H.C.P.No.381 of 2006

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